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April 16, 2018

VIA FACSIMILE AND ECF

The Hon. Jan E. DuBois
United States District Court
Eastern District of Pennsylvania
Room 12613
601 Market Street
Philadelphia, PA 19106

Re: ***In re Niaspan Antitrust Litigation* – MDL 13-2460**

Dear Judge DuBois:

Plaintiffs respectfully request that the Court grant a 30-day extension of the deadlines in the current schedule for the completion of expert discovery and class certification briefing. Defendants do not oppose this request and reviewed this letter before its submission. The circumstances giving rise to this request arose after the last status conference on March 29, 2018.

At the time of the March 29 conference, the deposition of former Barr employee Timothy Catlett was scheduled for April 4, 2018, though Mr. Catlett's health had previously prevented the deposition from going forward and Barr/Teva's counsel had advised Plaintiffs that due to Mr. Catlett's health, the deposition also might not be able to go forward on April 4. Mr. Catlett is a former Barr/Teva employee who, among other things, submitted a declaration in March 2005 concerning the financial impact on Barr if its generic Niaspan were kept off the market as part of Barr's opposition to Kos' motion for preliminary injunction in the *Kos. v. Barr* patent litigation. On April 2, 2018, Teva's counsel notified Plaintiffs that due to a recent further development in Mr. Catlett's health, the deposition could not go forward on April 4.

As Plaintiffs understand it, it remains uncertain when Mr. Catlett's health will permit his deposition. Plaintiffs continue to seek to depose Mr. Catlett, whom Plaintiffs first inquired about deposing in November 2017, but who has, as noted, been unavailable due to health issues. Plaintiffs have agreed not to seek any further extensions of the deadlines in the proposed schedule (attached) based on the timing of the Catlett deposition. Plaintiffs hope that a 30-day extension will permit them to depose Mr. Catlett before the expert reports would be due; if not, Plaintiffs will simply depose him whenever he is available.

The Honorable Jan E. DuBois

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Second, as Plaintiffs have previously alerted the Court, they have raised questions relating to AbbVie's transactional sales data. Those questions have been presented in letters from and to counsel for the respective parties. While AbbVie's counsel has answered many of those questions, a few remain to be answered. Those remaining questions relate to certain types of customer names that do not appear in a portion of the transaction records for the second half of 2012 and 2013, and to certain types of credit-related transactions that do not appear in the transaction records for 2014. AbbVie has explained that it will answer Plaintiffs' remaining data questions by reproducing relevant transaction data, with certain additional information included. Despite AbbVie's and its counsel's best efforts, the data was not able to be produced during the week of April 2 as AbbVie's counsel had previously stated it would be (*see* March 29 Tr. at 34:11-14). AbbVie now expects to produce the data on or before April 17, 2018.

Direct Purchaser Plaintiffs will rely on that data for, *inter alia*, demonstrating class-wide impact and calculating damages. After the data is produced, it will take some time for our experts to determine whether the data has answered the outstanding questions. Also, as we explained at the March 29 hearing (*see* March 29 Tr. at 32:1-33:13), Plaintiffs are concerned that the re-produced data may be materially different from the prior data, and AbbVie's counsel is not in a position to assure Plaintiffs that the new data will be essentially the same as the prior data. This is so not because AbbVie means to produce different data, but because the data will be pulled at a different time, perhaps by different people, with a different system, etc. If AbbVie produces the data on April 17, Plaintiffs expect that, with the 30-day adjustment in the schedule, Plaintiffs will have adequate time to review the data and address any issues that arise. The parties have agreed to meet and confer in the event something unexpected happens.

Third, Defendants have at least one forthcoming deposition of an absent End Payor plaintiff class member, Blue Cross Blue Shield of Michigan. On April 11, 2018, the Court granted Defendants' request (without objection from Plaintiffs) to take that deposition on April 16 and 17 (ECF 527). While Plaintiffs disagree with Defendants about the relevance of that deposition, Plaintiffs' experts should be able to consider the discovery before submitting reports.

The proposed amended schedule is attached to this letter. If Your Honor has any questions, please let us know. The parties are available if the Court wishes to hold a conference to discuss the request. Plaintiffs appreciate the Court's consideration of this request.

Respectfully,



David F. Sorensen

cc: All Counsel of Record (via ECF)

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE:
NIASPAN ANTITRUST LITIGATION**

MDL NO. 2460

**THIS DOCUMENT RELATES TO:
ALL ACTIONS**

MASTER FILE NO. 13-MD-2460

[Proposed] SIXTH AMENDED SCHEDULING ORDER

IT IS ORDERED that the deadlines in the above-caption action are **AMENDED** as follows:

Previous Date	Due Date	Event
March 30, 2018	March 30, 2018	Close of fact discovery - all discovery requests and subpoenas must be served to be answerable by this date, except as noted below.
April 6, 2018	April 6, 2018	Completion of depositions of designees of Lupin Pharmaceuticals, Inc., City of Providence, and all other depositions as addressed at the March 29, 2018, status conference. Giant Eagle files report regarding data production by McKesson Corporation.
April 12, 2018	April 12, 2018	Completion of deposition of designee of McKesson Corporation.
April 13, 2018	April 17, 2018	Completion of depositions of designees of entities addressed in this Court's Order dated March 20,
May 3, 2018	May 31, 2018	Plaintiffs serve opening expert reports.
May 17, 2018	June 18, 2018	Plaintiffs provide defendants with demands.
June 15, 2018	July 16, 2018	The parties file a joint settlement report.
July 27, 2018	August 27, 2018	Defendants serve opposition expert reports.
September 21, 2018	October 22, 2018	Plaintiffs serve rebuttal expert reports.
November 19, 2018	December 19, 2018	Close of expert depositions. Plaintiffs file class certification motions (along with previously served expert reports).
January 25, 2019	February 25, 2019	Defendants file opposition to class certification motions (along with previously served expert reports).

Previous Date	Due Date	Event
February 25, 2019	March 25, 2019	Plaintiffs file replies to class certification motions.
TBD	TBD	Hearing on class certification motions.
TBD	TBD	Telephonic conference with Judge DuBois to address summary judgment briefing and further scheduling.

BY THE COURT:

DuBOIS, JAN E., J.